

Torq SaaS License Agreement

TORQ SAAS LICENSE AGREEMENT

IF YOU ARE ENTERING INTO THIS AGREEMENT ELECTRONICALLY AND YOU HAVE ALREADY ENTERED INTO A SEPARATE LICENSE AGREEMENT DIRECTLY WITH TORQ TECHNOLOGIES LTD., OR TORQ TECHNOLOGIES INC. (AS MAY BE APPLICABLE, "COMPANY") IN CONNECTION WITH THE ACCESS OR USE OF THE SOFTWARE (DEFINED BELOW) THEN THIS SAAS LICENSE AGREEMENT ("AGREEMENT") SHALL NOT APPLY, EVEN IF YOU ARE REQUIRED TO CLICK "I AGREE", "ACCEPT" OR OTHER SIMILAR BUTTON AFFIRMING YOUR CONSENT TO THIS AGREEMENT. OTHERWISE, PLEASE READ THE FOLLOWING CAREFULLY BEFORE INSTALLING AND/OR USING THE SOFTWARE.

IF CUSTOMER HAS PURCHASED THE LICENSE GRANTED HEREUNDER FROM A PARTNER, RESELLER OR DISTRIBUTOR AUTHORIZED BY COMPANY ("PARTNER"), TO THE EXTENT THERE IS ANY CONFLICT BETWEEN THIS AGREEMENT AND THE AGREEMENT ENTERED BETWEEN CUSTOMER AND THE RESPECTIVE PARTNER, INCLUDING ANY PURCHASE ORDER ("PARTNER ORDER FORM"), THEN, AS BETWEEN CUSTOMER AND COMPANY, THIS AGREEMENT SHALL PREVAIL. ANY RIGHTS GRANTED TO CUSTOMER IN SUCH PARTNER ORDER FORM WHICH ARE NOT CONTAINED IN THIS AGREEMENT, APPLY ONLY IN CONNECTION WITH SUCH PARTNER. IN THAT CASE, CUSTOMER MUST SEEK REDRESS OR REALIZATION OR ENFORCEMENT OF SUCH RIGHTS SOLELY WITH SUCH PARTNER AND NOT COMPANY.

BY CLICKING "I AGREE", "ACCEPT" OR OTHER SIMILAR BUTTON, OR BY INSTALLING, ACCESSING AND/OR USING THE SOFTWARE, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU, OR THE COMPANY YOU REPRESENT, ("YOU" OR "CUSTOMER") ARE ENTERING INTO A LEGAL AGREEMENT WITH COMPANY, AND HAVE UNDERSTOOD AND AGREE TO COMPLY WITH, AND BE LEGALLY BOUND BY, THE TERMS AND CONDITIONS

OF THIS AGREEMENT. FURTHERMORE, YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER ANY LAWS OR REGULATIONS IN ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW.

YOU ASSUME ALL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE.

1. License

Subject to the terms and conditions of this Agreement, Company hereby grants Customer a limited, non-exclusive, non-sublicensable, non-transferable and revocable license to remotely access (i.e. on a SaaS basis) and/or use (as the case may be) Torq software (the “Software”) during the Subscription Term (as defined below), solely for Customer’s internal business purposes. Unless otherwise indicated, the term “Software” also includes any redistributable components and any documentation (“Documentation”) provided to Customer in connection with the operation of the Software. Customer may only use the Software in accordance with the Documentation, subject to the use limitations indicated in the Order and applicable laws. “Order” means the order form issued by the Company and agreed to by Customer by clicking and/or execution, as applicable, for the provision of the applicable license and services granted under this Agreement based in the license tier selected by the Customer.

2. Services

In addition to the above-mentioned license, Company will provide support and maintenance services in accordance with Company’s then current Service Level Agreement (“SLA”). The SLA may be updated from time to time by the Company. The Software and the services provided under the SLA shall be referred as the “Services”).

3. Subscription Fees.

3.1 If Customer has purchased the license granted under Section 1 and the Services directly from Company this Section 3.1 shall apply. The Services are conditioned on Customer's payment in full of the applicable fees set forth in the Order. Following the Initial Subscription Term, Company reserves the right to change its fees at any time, and Customer shall be informed of such changes via email prior to such changes ("Notification"). Should Customer not agree to the price changes, Customer sole remedy is to contact Company directly and to request to terminate its use of the Services prior to the effective date of the price changes as shall be detailed in the Notification. Unless otherwise specified in the Order: (i) Customer will pay all amounts due under this Agreement in U.S. Dollars currency, (ii) all amounts invoiced hereunder are due and payable within thirty (30) days of the date of the invoice, and (iii) all fees and other amounts paid hereunder are non-refundable. Any amount not paid when required to be paid hereunder shall accrue interest on a daily basis until paid in full at the lesser of: (i) the rate of one and a half percent (1.5%) per month; or (ii) the highest amount permitted by applicable law. All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other direct or indirect taxes, charges, levies and duties.

3.2 If Customer purchased the license via a Partner, the Services are subject to the full payment of the applicable fees as set forth in the Partner Order Form between Customer and the respective Partner. All payments shall be made directly to Partner, as agreed between Customer and Partner. If Customer is entitled to a refund under the terms and conditions of this Agreement, then, unless Company specifies otherwise, Company will refund any applicable fees to the Partner, and the Partner alone will be responsible for refunding the appropriate amounts to Customer.

4. Permitted Users.

The Software may be accessed solely by Customer's employees or service providers who are explicitly authorized by Customer to use the Software (each, a "Permitted User"). Customer will ensure that the Permitted Users comply with the terms of this Agreement at

all times; and shall be fully responsible for any breach of this Agreement by a Permitted User. Unauthorized access or use of the Software must be immediately reported to the Company.

5. Prohibited Uses.

Except as specifically permitted herein, without the prior written consent of the Company, Customer must not, and shall not allow any Permitted User or any third party to, directly or indirectly: (i) copy, modify, create derivative works of or distribute any part of the Software (including by incorporation into its products); (ii) sell, license (or sub-license), lease, assign, transfer, pledge, or share Customer's rights under this Agreement with any third party; (iii) use any "open source" or "copyleft software" in a manner that would require the Company to disclose the source code of the Software to any third party; (iv) disclose the results of any testing or benchmarking of the Software to any third party; (v) disassemble, decompile, reverse engineer or attempt to discover the Software's source code or underlying algorithms; (vi) use the Software in a manner that violates or infringes any rights of any third party, including but not limited to, privacy rights, publicity rights or intellectual property rights; (vii) remove or alter any trademarks or other proprietary notices related to the Software; (viii) circumvent, disable or otherwise interfere with security-related features of the Software or features that enforce use limitations; (ix) export, make available or use the Software in any manner prohibited by applicable laws (including without limitation export control laws); and/or (x) transmit any malicious code (i.e., software viruses, Trojan horses, worms, malware or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down a computer system or any component of such computer system) or other unlawful material in connection with the Software.

6. Personal Data.

6.1 Customer hereby warrants and represents that it will (a) provide all appropriate notices, (b) obtain all required informed consents and/or have any and all ongoing legal bases, and (c) comply at all times with any and all applicable privacy and data protection

laws and regulations (including, without limitation, the EU General Data Protection Regulation (“GDPR”)), for allowing Company to use and process the data in accordance with this Agreement (including, without limitation, the provision of such data to Company (or access thereto) and the transfer of such data by Company to its affiliates, subsidiaries and subcontractors, including transfers outside of the European Economic Area), for the provision of the Services and the performance of this Agreement.

6.2 To the extent that Customer needs a data processing agreement, the Customer shall request the Company to provide it with the Company’s Data Processing Agreement (“DPA”) and shall return it signed to Company as described therein.

6.3 In the event Customer fails to comply with any data protection or privacy law or regulation, the GDPR and/or any provision of the DPA, and/or fails to return an executed version of the DPA to Company, then: (a) to the maximum extent permitted by law, Customer shall be solely and fully responsible and liable for any such breach, violation, infringement and/or processing of personal data without a DPA by Company (including, without limitation, its employees, officers, directors, subcontractors and agents); and (b) in the event of any claim of any kind related to any such breach, violation or infringement and/or any claim related to processing of personal data without a DPA, Customer shall defend, hold harmless and indemnify Company (including, without limitation, its employees, officers, directors, subcontractors and agents) from and against any and all losses, penalties, fines, damages, liabilities, settlements, costs and expenses, including reasonable attorneys’ fees.

7. Warranties.

Each Party represents and warrants that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; and that the execution and performance of this Agreement will not conflict with other agreements to which it is bound or violate applicable law.

8. Intellectual Property Rights.

The Software is not for sale and is the Company's sole property. All right, title, and interest, including any intellectual property rights evidenced by or embodied in, attached, connected, and/or related to the Software (and any and all improvements and derivative works thereof) and any other products, deliverables or services provided by Company; are and shall remain owned solely by Company or its licensors. This Agreement does not convey to Customer any interest in or to the Software other than a limited right to use the Software in accordance with Section 1. Nothing herein constitutes a waiver of the Company's intellectual property rights under any law.

If Company receives any feedback (e.g., questions, comments, suggestions or the like) regarding any of the Services (collectively, "Feedback"), all rights, including intellectual property rights in such Feedback shall belong exclusively to Company and that such shall be considered Company's Confidential Information and Customer hereby irrevocably and unconditionally transfers and assigns to Company all intellectual property rights it has in such Feedback and waives any and all moral rights that Customer may have in respect thereto. It is further understood that use of Feedback, if any, may be made by Company at its sole discretion, and that Company in no way shall be obliged to make use of any kind of the Feedback or part thereof.

Any anonymous information, which is derived from the use of the Services (i.e., metadata, aggregated and/or analytics information) which is not personally identifiable information ("Analytics Information") may be used for providing the Service, for development, and/or for statistical purposes. Such Analytics Information is the Company's exclusive property.

As between the Parties, Customer is, and shall be, the sole and exclusive owner of all data and information inputted or uploaded to the Service by Customer ("Customer Data").

9. Third Party Components.

The Software may use or include third party open source software, files, libraries or components that may be distributed to Customer and are subject to third party open source license terms. A list of such components may be updated from time to time by the

Company. Requests for receiving such open source list and their respective license terms may be forwarded to: sales@torq.io. If there is a conflict between any open source license and the terms of this Agreement, then the open source license terms shall prevail but solely in connection with the related third party open source software. Company makes no warranty or indemnity hereunder with respect to any third party open source software.

10. Confidentiality.

Each Party may have access to certain non-public information of the other Party, in any form or media, including without limitation trade secrets and other information related to the products, software, technology, data, know-how, or business of the other Party, and any other information that a reasonable person should have reason to believe is proprietary, confidential, or competitively sensitive (the “Confidential Information”). Each Party shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect the other Party’s Confidential Information from disclosure to a third party. The receiving party’s obligations under this Section, with respect to any Confidential Information of the disclosing party, shall not apply to and/or shall terminate if such information: (a) was already lawfully known to the receiving party at the time of disclosure by the disclosing party; (b) was disclosed to the receiving party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the receiving party has become, generally available to the public; or (d) was independently developed by the receiving party without access to, or use of, the disclosing party’s Confidential Information. Neither Party shall use or disclose the Confidential Information of the other Party except for performance of its obligations under this Agreement (“Permitted Use”). The receiving party shall only permit access to the disclosing party’s Confidential Information to its respective employees, consultants, affiliates, agents and subcontractors having a need to know such information in connection with the Permitted Use, who either (i) have signed a non-disclosure agreement with the receiving party containing terms at least as restrictive as those contained herein or (ii) are otherwise bound by a duty of confidentiality to the receiving party at least as restrictive as the terms set forth herein. The receiving party will be allowed to disclose Confidential Information to the extent that such

disclosure is required by law or by the order or a court of similar judicial or administrative body, provided that it notifies the disclosing Party of such required disclosure to enable disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. All right, title and interest in and to Confidential Information are and shall remain the sole and exclusive property of the disclosing Party.

11. LIMITED WARRANTIES.

The Company represents and warrants that, under normal authorized use, the Software shall substantially perform in conformance with its Documentation. As the Customer's sole and exclusive remedy and the Company's sole liability for breach of this warranty, the Company shall use commercially reasonable efforts to repair the Software in accordance with the SLA. The warranty set forth shall not apply if the failure of the Software results from or is otherwise attributable to: (i) repair, maintenance or modification of the Software by persons other than the Company or its authorized contractors; (ii) accident, negligence, abuse or misuse of the Software; (iii) use of the Software other than in accordance with the Software's Documentation; (iv) Customer's failure to implement software updates provided by the Company specifically to avoid such failure; or (v) the combination of the Software with equipment or software not authorized or provided by the Company.

OTHER THAN AS EXPLICITLY STATED IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, SERVICES (INCLUDING PROFESSIONAL SERVICES) AND THE RESULTS THEREOF ARE PROVIDED ON AN "AS IS" BASIS. THE COMPANY DOES NOT WARRANT THAT: (i) THE SOFTWARE AND/OR THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR (ii) THE SOFTWARE WILL OPERATE ERROR-FREE. EXCEPT AS SET FORTH IN SECTION 6.3 AND THIS SECTION 11, THE COMPANY EXPRESSLY DISCLAIMS ALL EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING MERCHANT ABILITY , TITLE, NON- INFRINGEMENT, NON-INTERFERENCE, FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY SHALL NOT BE RESPONSIBLE FOR ANY WARRANTIES AND REPRESENTATIONS MADE BY ANY PARTNER TO CUSTOMER, AND SUCH WARRANTIES AND REPRESENTATIONS ARE THE SOLE RESPONSIBILITY OF SUCH PARTNER.

12. LIMITATION OF LIABILITY.

EXCEPT FOR ANY DAMAGES RESULTING FROM ANY BREACH OF EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS HEREIN, AND/OR CUSTOMER'S MISAPPROPRIATION OR OTHERWISE VIOLATION OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING MISUSE OF THE LICENSE BY CUSTOMER); NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, REPUTATION, OR PROFITS, DATA, OR DATA USE.

WITHOUT DEROGATING FROM COMPANY'S INDEMNIFICATION OBLIGATION UNDER SECTION 13 AND EXCEPT FROM DAMAGES RESULTING FROM COMPANY'S BREACH OF CONFIDENTIALITY OBLIGATION UNDER SECTION 10 HEREIN, COMPANY'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO COMPANY BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

13. Indemnification.

Company agrees to defend, at its expense, any third party action or suit brought against the Customer alleging that the Software, when used as permitted under this Agreement and the Order, infringes intellectual property rights of a third party ("IP Infringement Claim"); and the Company will pay any damages awarded in a final judgment against the Customer that are attributable to any such claim, provided that (i) the Customer promptly notifies the Company in writing of such claim; and (ii) the Customer grants the Company the sole authority to handle the defense or settlement of any such claim and provides the Company with all reasonable information and assistance, at Company's expense. The Company will not be bound by any settlement that the Customer enters into without the Company's prior written consent.

If the Software becomes, or in the Company's opinion is likely to become, the subject of an IP Infringement Claim, then the Company may, at its sole discretion: (a) procure for the Customer the right to continue using the Software; (b) replace or modify the Software to avoid the IP Infringement Claim; or (c) if options (a) and (b) cannot be accomplished despite the Company's reasonable efforts, then the Company may terminate this Agreement and if purchased directly from the Company. Company shall also provide a refund for any amount pre-paid by Customer for such returned Software for the remaining unused period of the license.

Notwithstanding the foregoing, the Company shall have no responsibility for IP Infringement Claims resulting from or based on: (i) modifications to the Software made by a party other than the Company or its designee; (ii) the Customer's failure to implement software updates provided by the Company specifically to avoid infringement; or (iii) combination or use of the Software with equipment, devices or software not supplied by the Company or not in accordance with the Documentation.

This Section states Company's entire liability, and Customer's exclusive remedy, for claims or alleged or actual infringement.

14. Term and Termination.

This Agreement commences on the Effective Date and, unless terminated in accordance herewith, shall continue in full force and effect for the subscription term stated in the applicable Order Form or Partner Order Form (as the case may be) (the "Initial Subscription Term"). In case Customer purchased the license directly from the Company, following the Initial Subscription Term this Agreement shall automatically renew for successive periods of equal length (each, a "Renewal Term"), unless terminated earlier as set forth herein and/or either Party provides the other Party with at least a thirty (30) days' prior notice of non-renewal. Each Renewal Term (if applicable) together with the Initial Subscription Term, the "Subscription Term"). Customer may send Company such non renewal notice by sending a cancellation request to us at sales@torq.io.

Either Party may terminate this Agreement with immediate effect if the other Party materially breaches this Agreement and such breach remains uncured fifteen (15) days after having received written notice thereof. Upon termination or expiration of this Agreement: (i) Software license granted to Customer under this Agreement shall expire, and Customer shall discontinue any further use and access thereof; (ii) Customer shall immediately delete and dispose of all copies of the Documentation in Customer's or any of its representatives' possession or control; and (iii) Company may delete all Customer Data without affecting any of the Company's rights to the Analytics Information. The provisions of this Agreement that, by their nature and content, must survive the termination of this Agreement in order to achieve the fundamental purposes of this Agreement (including but not limited to "Intellectual Property Right", "Confidentiality", "Limitation of Liability", "Governing Law and Disputes" and "Miscellaneous") shall so survive. The termination of this Agreement shall not limit Company from pursuing any other remedies available to it under applicable law. If applicable, Customer shall be responsible to download its Customer Data prior to termination of this Agreement.

15. Governing Law and Disputes

15.1 North American and South American Customer. If you are domiciled in North America or South America (collectively, "America") or if your corporate headquarters is located in America: (i) this Agreement is between you and Torq Technologies Inc.; (ii) this Agreement and the Order, and any disputes between you and Torq Technologies Inc. in connection with this Agreement or the Order, shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of laws rules; and (iii) you agree to submit to the personal and exclusive jurisdiction of the state and federal courts located in New York County and waive any jurisdictional, venue, or inconvenient forum objections to such courts.

15.2 Non American Licensees. If you are not domiciled in America and your corporate headquarters is not located in America: (i) this Agreement is between you and Torq Technologies Ltd.; (ii) this Agreement and the Order, and any disputes between you and Torq Technologies Ltd. in connection with this Agreement or the Order, shall be governed

by and construed in accordance with the laws of the State of Israel without regard to its conflict of laws rules; and (iii) you agree to submit to the personal and exclusive jurisdiction of the courts located in Tel Aviv-Yaffo, and waive any jurisdictional, venue, or inconvenient forum objections to such courts.

15.3 Injunctive Relief. Notwithstanding anything to the contrary, we may seek injunctive or other equitable relief or other relief necessary to prevent or restrain a breach of this Agreement or the Order Form in any jurisdiction.

16. Customer Reference.

During the Subscription Term of this Agreement, Company may use Customer's name and logo to identify Customer as a customer of Company or user of the Software, on Company's web site, marketing materials or otherwise. Upon Customer's request Company will remove such reference.

17. Miscellaneous.

This Agreement, including the DPA, any Order(s) and any exhibits attached or referred hereto, represents the complete agreement concerning the subject matter hereof and may be amended only by a written agreement executed by both Parties. The failure of either Party to enforce any rights granted hereunder or to take action against the other Party in the event of any breach hereunder shall not be deemed a waiver by that Party as to subsequent enforcement of rights or subsequent actions in the event of future breaches. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. Any use of the Software by an agency, department, or other entity of the United States government shall be governed solely by the terms of this Agreement. Neither Party may assign its rights or obligations under this

Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, this Agreement may be

assigned by either Party in connection with a merger, consolidation, sale of all of the equity interests of the Party, or a sale of all or substantially all of the assets of the Party to which this Agreement relates. This Agreement does not, and shall not be construed to create any relationship, partnership, joint venture, employer- employee, agency, or franchisor- franchisee relationship between the Parties. The Company will not be liable for any delay or failure to provide the Services resulting from circumstances or causes beyond the reasonable control of the Company including, but not limited to on account of strikes, shortages, riots, insurrection, fires, flood, storms, explosions, acts of God, war, government or quasi- governmental authorities actions, acts of terrorism, earthquakes, power outages, pandemic or epidemic (or similar regional health crisis), or any other cause that is beyond the reasonable control of the Company. This Agreement may be executed in electronic counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement.